Missouri Law Review

Volume 6
Issue 4 *November 1941*

Article 4

1941

Book Reviews

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CRIMINAL YOUTH AND THE BORSTAL SYSTEM. By William Healy and Benedict S. Alper. New York: The Commonwealth Fund, 1941. Pp. VI, 251.

Perhaps the outstanding development in criminology in the last few years has been the increased attention given to the problems raised by the adolescent offender and the offender of the next higher age group. Not only do these age groups contribute the largest numbers of arrests, per year of age at arrest, but they are the source, likewise, from which almost all older offenders are derived, very few of the latter having first begun their criminal careers at a later age. The realization that the problem of crime is largely, directly or indirectly, the problem of the youthful offender is both the cause and the effect of such books as *Youth in the Toils*, by Harrison and Grant, and *The Adolescent Court and Crime Prevention*, by Brill and Payne.

There was in consequence an increasing awareness that the juvenile court program was inadequate not only because it has not fully lived up to what optimists once hoped that it could do for its age group, but also because it dropped its human material at the very time when this material was presenting the most serious social problem. It was plain that the problem was not to be met by merely extending the age-limit of the juvenile courts upward. Such a procedure would merely have meant either that a technique of treatment was being extended to older offenders, for whom it might be inadequate, or that juvenile courts would have been forced to take on a criminal repression technique that might have reacted most harmfully on their genuine juvenile work. Accordingly Chicago, and, later, Philadelphia and Brooklyn have pioneered by setting up special courts for adolescents. This angle of attack on the problem will in the course of time be greatly advanced by the work of the American Law Institute in its construction of a model Youth Court Act.

But of even more importance, or at any rate of more dramatic interest, is the question of the sort of correctional treatment to be provided for these young offenders. And here too the American Law Institute has rendered valuable guidance by means of its recently completed Youth Correction Authority Act—an act whose basic soundness is already being proved so effectively in California and West Virginia. In the drafting of that act it was realized that the greatest single source of information lay in the working of the famous Borstal System in England. The present book is the resultant survey of that system, made possible by the generosity of Mr. John D. Rockefeller, III, and published by the Commonwealth Fund. The fitness of the senior author to perform a service of this kind, is, of course, too well known, from his many years of pioneering work in the field, to need any identification.

The study leads off with an introductory part, to acquaint the reader with

the seriousness of the problem of youthful crime and with the extent of our failure to meet it by traditional, unimaginative, merely punitive methods. Then comes the central part of the book, the description of the origin and development of *Borstal* and what that term means today. Most of us of course already have a rather general and vague idea of it, as an effort to get away from merely regimented and institutionalized treatment of younger, and presumably formative, offenders. Nevertheless, probably all but a minority of the book's readers will feel a start of surprise at the extent to which flexibility and common sense are used in *Borstal.* There is no space to describe in detail what these innovations are, but it leaves one with a sense of shame that procedures of such obvious sense should appear surprising. A few examples only can be cited. The families of newly committed inmates are communicated with to get their aid and cooperation so far as possible. In preparing an inmate for release on parole the agent makes his acquaintance several months before the release takes place, so as to make the ultimate supervision more effective. In the allocation of offenders to particular *Borstals* and to the particular house within a *Borstal* not only the character of the offender is taken into account, but even the make-up of the boys already in the house and the personality of the house-master and the sort of cases he has been successful with. The "public opinion" of the residents of a house is carefully considered and used as a reformative factor. The cooperation of the residents of the region surrounding a *Borstal* is sought and made active use of. Further examples of freedom from traditionalism could easily be cited. These will be sufficient, however, to indicate how vital to the *Borstal* idea it is to have many small institutions, and how impossible such innovations would be in large prisons, where mass handling inevitably requires routine handling and where sheer bulk makes individualization impossible. Another point that emerges clearly is that there is no "Borstal System" in fact—there are as many systems as there are institutions, each going its way as seems best to it at the time—which may not at all be the way things look to it next year.

The signal success of *Borstal* in reducing recidivism is the best proof of its value. In appraising this success we must not forget that *Borstal* is not normally used for first offenders, the amenable cases; it is reserved for the hardened offenders, the unpromising cases. With a record of such success it is sad indeed to read that the war is already causing the closing of many of the institutions and that many of the officials interviewed by the authors were eager to pass on their experiences, so that "as much as possible [might] be salvaged from what was once and might not be again, in order that somewhere else, perhaps in the United States, their principles and practice might be reconstituted so that all they had learned and done would not be forfeited" (p. 71). This most valuable objective will indeed be served, and most efficiently, by the present book.

Law School, University of Chicago. E. W. PUTTKAMMER

JUSTICE IN GREY. By William M. Robinson, Jr. Cambridge, Massachusetts: Harvard University Press, 1941. Pp. xxi, 713.

The subtitle—A History of the Judicial System of the Confederate States of America—indicates the subject matter of the book. While some space is devoted to the state courts, the principal attention is to the federal judicial system. The organization and work of the district courts, the territorial courts in Arizona, the courts in the Indian country, courts martial and military courts and the board of sequestration commissioners are described in detail. It is surprising to learn that the Confederate States established the first Department of Justice in the English-speaking world. The activities of this executive department, which are described in detail, consisted not only of the ordinary legal work of the Attorney General, but also supervision of the accounts of marshalls and court clerks, the custody of official bonds, provision of accommodations for the courts, the custody and publication of laws, and superintending of the Bureau of Printing, the Bureau of Patents and of territorial and Indian affairs.

The author points out that the Confederate States vested trial jurisdiction in a single set of district courts and thus anticipated by fifty years the union of the United States district and circuit courts. The transition from United States to Confederate trial courts proved to be easy, as for the most part the same judges continued to administer the same laws in the same court rooms. In accordance with ideas of states' rights, the district courts were not given jurisdiction on account of the diversity of citizenship of the parties. They continued to flourish throughout the war, though after the fall of 1861 their activities were confined largely to proceedings for sequestration of enemy property. Under the Provisional Constitution, the Supreme Court was made up of all the district judges. Its sitting was suspended, however, until the Court was organized under the Permanent Constitution. In debating this problem, disputes arose as to the salaries of the judges and comparisons of the salaries of the judges of the highest courts of the state proved to be an irritating factor. Even more serious were differences of opinion as to whether appeals should be allowed from the highest state courts in cases involving questions under the Federal Constitution. As a result, the Supreme Court was never organized.

Some parts of the book are exceedingly interesting to the general reader. The scenes of the first chapter, "One Federal Judiciary Succeeds Another," are vividly described. The treatment of the Supreme Court controversy is admirable. Other chapters approach these in literary worth, but the book contains many inconsequential details which will be of interest only for geneological and reference purposes. Naturally and properly the author approaches the subject with sympathy for the southern side. At times, however, he seems to be again fighting the war with a spirit which somewhat detracts from the work.

Missouri readers will be interested to discover that the author considers that Missouri was a member of the Confederacy. On this basis, it is not too surprising to learn that at the close of the war the seat of the Missouri government was located at Marshall, Texas. Of course, Confederate courts were never

established in the state, but Missourians tied with North Carolinians for second place in the number of patents granted for inventions at Richmond in 1864.

The social and economic conditions in the South were undoubtedly reflected in the litigation in the state courts both during and after the war. The author's treatment of the state courts has been largely confined to matters of jurisdiction, organization and personnel. He half promises, however, to write a future work dealing with the flesh and blood of these court proceedings. Such a book would doubtless be of broader interest than the one under review. The present work is a necessary background for the contemplated one, and is in itself an important contribution.

University of Missouri Law School THOMAS E. ATKINSON

MARGIN CUSTOMERS. By Edward H. Warren. Norwood, Mass.: The Plimpton Press, 1941. Pp. xv, 464.

Once upon a time there lived a man (Benjamin N. Cardozo). He was a lawyer and a judge (New York Court of Appeals, Supreme Court of the United State). Now this man was a capable judge, in fact he was an excellent judge; but he was human and like all humans he was not infallible. He wrote an opinion (*Wood v. Fiske*[1]) concerning the law of pledges which infuriated (no other word is sufficient) another man (Edward H. Warren). This other man was also a lawyer and a college professor (Harvard University Law School). After many years of thought and consideration this professor wrote a book critizing the judge's opinion and discussing the law of pledges. That, dear reader, is, in brief, the story and the style of *Margin Customers*, its *raison d'etre*.

In writing it Professor Warren has added another volume to what may well be termed a revival of property law,[2] a revival which has removed from the law of property the stigma of antiquity and given it the stamp of realism. This renaissance has been accomplished by the simple process of stressing the social and economic conflicts out of which problems in the law of property arise, and by viewing property rights as human rights rather than as opposed to the latter.

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1. 215 N. Y. 233, 109 N. E. 177 (1915).
2. Within the past five years nearly every modern treatise and casebook on the law of property has been re-edited and many new books have been published: *e. g.*, TIFFANY, REAL PROPERTY (3rd ed. 1939); THOMPSON, REAL PROPERTY (Permanent Edition 1939); LAWLER AND LAWLER, HISTORICAL INTRODUCTION TO THE LAW OF REAL PROPERTY (1940); MOYNIHAN, PRELIMINARY SURVEY OF THE LAW OF REAL PROPERTY (1940); RESTATEMENT, PROPERTY (1936, 1940); BROWN, PERSONAL PROPERTY (1936); FRASER, CASES ON PROPERTY (2nd ed. 1941); KIRKWOOD, CASES ON CONVEYANCES (2nd ed. 1941); LEACH, CASES ON FUTURE INTERESTS (2nd ed. 1940); POWELL, CASES ON FUTURE INTERESTS (2nd ed. 1937); KALES, CASES ON FUTURE INTERESTS (2nd ed. 1936); SIMES, CASES ON FUTURE INTERESTS (1939); ROBERTS, CASES ON PERSONAL PROPERTY (1938); MARTIN, CASES ON CONVEYANCES (1939); BROWN, CASES ON REAL PROPERTY (1941); RUNDELL, CASES ON RIGHTS IN LAND (1941); WALSH AND NILES, CASES ON PROPERTY (1939); WARREN, CASES ON PROPERTY (2nd ed. 1938).

The stress has been upon the preventive and protective measures as distinguished from the interpretive function of the law; a point of view which has made the law of property seem real and alive, and a necessary part of the daily working tools of a practicing lawyer.

Margin Customers is a thoroughly delightful book, full of the idiosyncrasies and personality of the author. Professor Warren's comments on many miscellaneous subjects make interesting and amusing what might have been just another commentary on the law of pledges. The preface, containing his suggestions concerning style, should be required reading for all writers, particularly those within the legal profession, for many of them, including some among his colleagues,[3] have ignored the rules for too long a time. His advice as to the selection of words (one and two syllables), and his test for appraising productivity (by quality and not quantity) would, if applied, make for much less bulk and much more lucidity in legal literature. No one has more aptly described the proper scholarly approach to a problem than Professor Warren when he said, "Read much, discuss much, ponder most, write a little."[4]

Not only does he give advice as to style, but he follows it; his book is a simple, direct discussion of the problems of margin customers in which he continually insists on the highest standard of scholarship. His keen analysis of the cases and his insight into the business transactions involved cause him to approach the difficulties of margin customers with a viewpoint which is sympathetic to both the customer and the broker. But he also approaches the problem with a stern New England conscience which insists on a high standard of business morality and which refuses to condone anything less even though it may be acceptable business practice. It is the combination of these which makes *Margin Customers* such interesting reading, and which enables Professor Warren to apply the common law of pledges to a new situation and work out a satisfactory solution. And in so doing he takes great pains to keep clear the distinction between what the law *is* and what he thinks it *ought to be.*

The book contains adverse criticisms of the opinions and writings of certain judges (notably Holmes and Cardozo) which tend to bear out the conclusion that others have expressed: that the so-called great and liberal jurists in this country have made their reputation primarily in the field of public law, and that their conception of private law, particularly property law, is frequently confined to the common law as it existed in the days of Littleton, Coke, and Blackstone. Professor Warren, on the contrary, approaches the problems of margin customers with the point of view that modern situations require modern law, and that the way to secure such law is through the growth and development of the old rules by changing them to harmonize with the modern situations.[5] It is this conception,

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3. Professor Warren's characterization of his colleagues is interesting; he says, "whatever else the Harvard Law Faculty is, or is not, it is certainly an intellectual beehive, without one drone." P. vii.

4. P. vi.

5. He is a professed disciple of Lord Mansfield and of the latter's approach to the problems of business law. Pp. 91-2.

that law cannot remain static in a dynamic world, which has enabled him to see his way clearly through the morass of cases, to balance the interests of the customer and the broker, and to reach a sound conclusion as to what the law is or ought to be.

In a little more than four hundred pages the author has thoroughly discussed the modern law of pledges plus a good many related problems in the law of personal property. He has also considered the New York law in detail with a case by case review of its development. The book is a clear, concise, and interestingly written exposition which will be useful alike to laymen, students, and lawyers. Its simple language makes it understandable by the layman and law student without detracting from its usefulness to the practicing lawyer and judge.

University of Missouri School of Law LAURENCE M. JONES

TRUST BUSINESS IN COMMON LAW COUNTRIES. By Gilbert T. Stephenson. New York: American Bankers Association, 1940. Pp. 911.

Stephenson's *Trust Business in Common Law Countries* is a formidable volume of some nine hundred pages, devoted almost wholly to presenting factual data based upon individual research. More than three pages of the introduction are required merely to list the individuals all over the world who contributed to Stephenson's study, either by supplying factual material or criticizing the study.

Stephenson's work is not a legal treatise, but is a study of the trust business in the common law countries, that is, in those countries whose basic system of law is derived from the English common law. Stephenson plans to supplement this volume by a further volume comparing the trust business in common law countries with the trust business in civil law countries. The present study covers the British Isles, Canada (except the Province of Quebec), New Zealand, Australia, South Africa, British India, British colonies that are predominantly common law, and the United States, except for Louisiana and Puerto Rico. The study is devoted primarily to the operation of trust institutions, since, in the main, those individuals who administer estates and trusts and perform other services similar to those of trust institutions do so incidentally and not as a business.

The trust business in the various countries studied is presented under the following sixteen topical heads: historical background, trust institutions, trust functions, trust policies, trust compensation, trust legislation, trust statistics, trust earnings, trust supervision, trust promotion, trust education, trust literature, trust associations, trust branches, distinctive features, and conclusions.

It is interesting to note that the conduct of the trust business by trust institutions in the United States antedates by many years the development of trust business in England, and that the beginnings of the trust business are found in British India, with a charter, granted on March 26, 1774, to the Mercantile and

Trading Community, in Bengal, establishing the Supreme Court of Judicature in Bengal. This court was empowered to exercise eccliastical jurisdiction similar to that exercised in the Diocese of London, including the authority to grant probate of the wills of British subjects dying in Bengal, Bahar, and Orissa. Under this authority, an office known as the Eccliastical Register was created in 1801, and the registrar undertook the business of settling estates. In the United States, the earliest trust institutions were the Massachusetts Hospital Life Insurance Company of Boston (1818), and the Farmers Fire Insurance and Loan Company (1822), which is now the City Bank Farmers Trust Company of New York. These institutions did not, however, immediately engage in the trust business, and the first record of the appointment of a trust institution in the United States of a fiduciary character was in 1831, when the New York Life Insurance and Trust Company was appointed guardian. South Africa entered the trust field in 1834, with the chartering of the South Africa Association for the Administration and Settlement of Estates, at Capetown. The trust business, likewise, got an early start in New Zealand and Australia.

It was not until the present century that the trust business developed in England, Scotland, Wales, and Ireland. In England the office of Public Trustee was opened on January 1, 1908, and in the next year some of the English banks undertook to handle trust business, not through any desire to expand their business, but at the insistence of their customers.

The trust business in other common law countries in the main is conducted along the same lines as the trust business in the United States, but nevertheless it offers many interesting contrasts. In England most of the trust business is handled by banks, despite their late start in the field. In Canada, New Zealand, and Australia, on the contrary, the trust business and the banking business are disassociated, and banks do not engage in the trust business, while trust companies do not engage in banking. The office of Public Trustee has been established in many of the British common law countries, and has reached its greatest development in New Zealand. From statistics of the Public Trustee and private New Zealand trust institutions, it is evident that a far larger proportion of New Zealanders make use of trust institutions, either public or private, than is true of any other common law country.

Common trust funds in which the funds of many trusts are combined for investment purposes represent a new development in the United States, but have an extended history in New Zealand and Australia. The oldest common trust fund in the world is operated by the Public Trustee of New Zealand. This fund began operations in 1873 and now amounts to approximately $100,000,000. Participants in the fund do not share the income from it *pro rata*, but are paid a stated rate of return set by the Governor General in Council. This rate of return and the principal invested in the fund are guaranteed by the Commonwealth of New Zealand.

Among matters which Stephenson mentions of particular interest to lawyers and to trust company officials are the Birkenhead Acts of 1925, which recodified and modernized the Law of England insofar as it pertains to the trust business.

These Acts made no changes in the substantive law of trusts, but modernized the administrative law of trusts. They include a Presumption of Survivorship, based on order of seniority, to meet the problem of people meeting death in a common disaster in which it is difficult to establish the facts relating to the order of survivorship. They revised the laws of descent and distribution to make them conform to the results of a study of the actual distribution set forth under probated wills on file in Somerset House, in London. They created statutory will forms and statutory trusts, various forms of trusts for minors and protective trusts. They broadened the administrative powers of trustees, authorizing the retention of investments not on the statutory list and giving the Court authority to enlarge the powers of the trustee where necessary or expedient to carry out the purposes of the trust. In New Zealand and Australia, the administration of estates and trusts has been simplified and made more economical by the adoption of humane and enlightened legislation. For example, in New Zealand, the Public Trustee may administer an estate not exceeding $1,600 without taking out letters of administration or going through formal probate. The Public Trustee is also authorized to pay over the entire estate to the widow if it does not exceed $800. Broad discretion is conferred upon trustees by law to use and apply funds for the support of minor beneficiaries. These are typical of other provisions which simplify the administration of estates and trusts and lower the cost of administration.

Stephenson's book should prove a valuable addition to the library of any trust man and of lawyers and legislators interested in trust administration and trust law.

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